UNITED STATES PATENT AND TRADEMARK OFFICE

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PTOL-90A (Rev. 04/07)

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte SANAA F. ABDELHADI and SANDIP A. AMIN

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Appeal 2007-3436
Application 09/964,999
Technology Center 2100

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Decided: February 21, 2008

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Before LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP, and
STEPHEN C. SIU, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the Examiner's final rejection of claims 1, 2, 5-
7, 10-12, 15-17, and 20. We have jurisdiction under 35 U.S.C. §§ 6(b),
134(a).

We affirm.

In Appellants' system and method, when a user enters a command to be executed by network computer systems, the command is only sent to the systems that are determined to be accessible, so as to minimize command execution errors. (*See* Abstract.) Claim 1 is illustrative.

1. A method of executing remote commands on remote computer systems comprising the steps of:

entering a remote command in a local command interface, said command to be executed by said computer systems;

automatically determining each of said computer systems accessibility; and

dispatching said command to the computer systems that are determined to be accessible.

The Examiner relies on the following references as evidence of unpatentability:

| Johnson | US 6,397,245 B1 | May 28, 2002 |
| Meyer | US 6,701,364 B1 | Mar. 2, 2004 |

Procedural background

In the Final Rejection the Examiner rejected claims 1, 3-6, 8-11, 13-16, and 18-20 under 35 U.S.C. § 102(e) as being anticipated by Meyer and claims 2, 7, 12, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Meyer and Johnson.

Appellants' Appeal Brief (filed Aug. 25, 2006) is not in compliance with 37 C.F.R. § 41.37(c)(1)(viii) in that the Claims appendix is not a copy of the claims involved in the appeal. The Claims appendix purports to amend claims 5, 10, 15, and 20, and to cancel claims 3, 4, 8, 9, 13, 14, 18, and 19. The "amendment" has not been submitted in accordance with 37 C.F.R. § 1.121 and thus has not made any changes to claims 1-20 as they stood at the time of the final rejection. *See Manual of Patent Examining Procedure* § 1206, heading I (8th ed., Rev. 6, Sept. 2007) (amendment filed with or after appeal "must be submitted in a separate paper."). The Examiner, however, indicates that claims are currently canceled or amended "in the present Appeal Brief." (Ans. 2.)

We will not remand the proceeding to the Examiner to correct the record because three earlier papers have been denied entry by the Examiner as being not in compliance with the rules for an Appeal Brief, none of the denials pointing out that claims cannot be amended by an Appeal Brief. To avoid further delay, for the purposes of this appeal we will assume that the claims before us are as set forth in the Appeal Brief's Claims appendix, even though the claims have not been formally amended.

We thus conclude that the rejections for our review are as set forth in the Answer: Claims 1, 6, 11, and 16 are rejected under 35 U.S.C. § 102(e) as being anticipated by Meyer; claims 2, 5, 7, 10, 12, 15, 17, and 20 are rejected[1] under 35 U.S.C. § 103(a) as being unpatentable over Meyer and Johnson.

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[1] *See* Answer 5-6.

The rejections

Based on Appellants' arguments in the Appeal Brief, we will decide the appeal on the basis of claims 1 and 2. *See* 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner finds claim 1 to be anticipated by Meyer, in particular by description in columns 5 through 7 of the reference. (Ans. 4-5.) Meyer teaches a method and apparatus for performing remote system administration upon a standalone computer system. A remote communication sequence is used to initiate a Web browser application within a communication control platform using a Hypertext Transfer Protocol (HTTP) communication link. Meyer Abstract.

> Generally, the controlling computer **120** [Fig. 1] addresses the first remote standalone computer system **270** [Fig. 2] through the first HTTP server **240** via the communication platform **210**. Once communication is established between the controlling computer **120** and the remote standalone computer system **270**, computer diagnostics can be performed. The diagnostic software application server program **230** controls a computer administration process that is capable of performing multiple status and diagnostic checks on remote standalone computer systems.

Meyer, col. 6, ll. 1-9.

Appellants argue that Meyer does not teach the steps of claim 1 because, "Meyer advocates the use of a browser to establish communication between the controlling computer and the remote computer." (Br. 4.) According to Appellants, a user has to manually, not automatically, attempt

to connect with the remote computer. Only after the communication has been established does the user have the opportunity to enter the command to be executed by the remote computer in the browser. (*Id.* at 4-5.)

The Examiner responds that not all the steps of claim 1 are "automatic." "The HTTP request itself is what automatically determines accessibility of the computer systems." (Ans. 7.)

Meyer discloses that each remote standalone computer system 270, 280, 290 (Fig. 2) is given its own HTTP server, which listens for HTTP requests. Col. 5, ll. 42-58.

> Hypertext Transfer Protocol (HTTP) is the set of rules for exchanging files on the World Wide Web. . . . Generally, Web server machines contain, in addition to the HTML and other files it can serve, an HTTP daemon. The HTTP daemon is a program that is designed to wait for HTTP requests and handle them when they arrive. The web browser application program 215 [Fig. 2] is an HTTP client, sending requests to server machines. When the user of the web browser application program 215 enters a file request by either "opening" a Web file by typing in a Uniform Resource Locator (URL), or clicking on a hypertext link, the web browser application program 215 builds an HTTP request and sends it to the Internet Protocol address (IP address) that is indicated by the URL. The HTTP daemon in the destination server machine receives the request and, after any necessary processing, the requested file is returned.

Meyer, col. 5, ll. 22-41.

Although a user manually enters commands to connect to remote computers, the HTTP request and response are performed by software and

thus "automatic," or handled by machines without user control or intervention. Because Meyer discloses that computer diagnostics can be performed once communication is established between the controlling computer and the remote standalone computer system, we agree with the Examiner that Meyer describes "automatically determining each of said computer systems accessibility" and "dispatching said [remote] command to the computer systems that are determined to be accessible" within the meaning of claim 1.

Appellants also allege (Br. 5) that in Meyer the command has to be entered as many times as there are standalone computers that are being diagnosed. We find Appellants' assessment contrary to, for example, Meyer column 6, lines 6 through 22, which indicates that a single command from controlling computer system 120 can perform an "overview status check" on the remote standalone computer systems.

Finally, Appellants submit that, in Meyer, it is only after the communication has been established that the user may have the opportunity to enter the command to be executed by the remote computer in the browser. (Br. 4-5.) Appellants' argument seems to be based on the view that claim 1 requires the order of first "entering a remote command" and only then "automatically determining" the computer systems accessibility.

Unless the steps of a method actually recite an order, the steps are not ordinarily construed to require one. *Interactive Gift Express, Inc. v. CompuServe, Inc.*, 256 F.3d 1323, 1342 (Fed. Cir. 2001). However, such a result can ensue when the method steps implicitly require that they be

performed in the order written. *Id.* (citations omitted). *See also Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1369-71 (Fed. Cir. 2003) (district court erred in claim construction by reading a step order from the written description into the claims).

Here, there is no explicit or implicit requirement for any particular order of "entering" and "automatically determining." There is no implicit requirement because the steps merely relate to "entering" and "determining." The steps do not require that the entering or determining be based on the end result or product of the other step. Nor are the steps conditioned on the premise that the other of the steps has been completed.

We are thus not persuaded that the Examiner's finding of anticipation is erroneous. We sustain the rejection of claim 1, and of claims 6, 11, and 16, which fall with claim 1.

Claims 2, 5, 7, 10, 12, 15, 17, and 20 stand rejected as being obvious over the combination of Meyer and Johnson. With respect to claim 2, the Examiner relies on Johnson for its teaching of "pinging" over a network to determine if a network device is accessible. (Ans. 5-6.)

Appellants submit there is no suggestion or motivation to incorporate the step of pinging into the Meyer method, absent specific teachings in the references to do so, because Meyer already teaches a method of determining a computer's accessibility. Appellants also submit that if pinging were to replace the HTTP request in the Meyer system, then the resulting combination would not perform the task in the claimed invention. (Br. 5-6.)

Instant claim 2, however, only requires that the step of automatically determining each of the computer systems' accessibility "includes" the step of pinging each of the computer systems. The combination of both an HTTP request and response, as described by Meyer, and "pinging" each of the computer systems, as suggested by Johnson, fits comfortably within the scope of claim 2.

In any event, the Examiner's rationale is based on substituting one technique for automatically determining a computer system's accessibility with another that was well known in the art. We disagree with Appellants that, to demonstrate prima facie obviousness, the references must provide some "specific teachings" for the substitution. "Express suggestion to substitute one equivalent for another need not be present to render such substitution obvious." *In re Fout*, 675 F.2d 297, 301 (CCPA 1982).

We further agree with the Examiner (Ans. 8) that the resulting combination would perform "the task" in the claimed invention. Appellants do not articulate a basis for the belief that the offered combination would not perform "the task." If Appellants are alleging a lack of "automatically determining" in the combination, we note that Johnson describes a system for "automatically" pinging networked entities (col. 7, ll. 16-33).

We have considered all of Appellants' arguments in response to the rejections but are not persuaded of error. We sustain the rejection of claims 1, 6, 11, and 16 under 35 U.S.C. § 102(e) as being anticipated by Meyer and the rejection of claims 2, 5, 7, 10, 12, 15, 17, and 20 under 35 U.S.C. § 103(a) as being unpatentable over Meyer and Johnson.

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CONCLUSION

The Examiner's rejections of claims 1, 2, 5-7, 10-12, 15-17, and 20 under 35 U.S.C. § 102(e) or 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a).

AFFIRMED

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